

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America

v.

Ferrell Benjamin Gibbs,

Defendant.

C/A No. 6:03-cr-0609-GRA

ORDER
(Written Opinion)

This matter is before this Court for a ruling on Defendant's "Motion for a Judgment of Acquittal under Rule 29(c)."

The Petitioner is proceeding *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

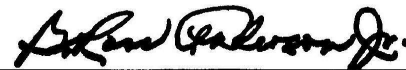
On December 2, 2003, after a jury trial, Defendant was convicted of violating 18 U.S.C. § 1003 and 18 U.S.C. § 1341. On April 30, 2004, this Court sentenced the Defendant to a term of imprisonment for 78 months. According to Rule 29(c) of the Federal Rules of Criminal Procedure, a Motion for a Judgment of Acquittal must be made within 7 days of a guilty verdict. The Defendant did not file this motion until July

21, 2005, which is clearly not within 7 days of December 2, 2003 as mandated in Rule 29(c). However, the Defendant did exercise his right to appeal by filing a Notice of Appeal on May 3, 2004. This Court takes judicial notice that on June 3, 2005, the United States Court of Appeals for the Fourth Circuit affirmed the Defendant's convictions, *United States v. Gibbs*, 04-4322 (2005), though the case was remanded solely for resentencing under *United States v. Booker*, 125 S. Ct. 738 (2005).

Even if the Defendant did file the Motion for a Judgment of Acquittal under Rule 29(c) in a timely manner, this Court denies the motion on its merits.

IT IS THEREFORE ORDERED that the Defendant's Motion for a Judgment of Acquittal under Rule 29(c) is DENIED as untimely, or in the alternative, on its merits.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

July 27, 2005.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.

